MAY 22 1959
JAMES R. BROWNING, Clerk

No. 774

IN THE

# Supreme Court of The United States

OCTOBER TERM, 1958

ELMO E. ALLEN, ET AL.,
*Petitioners,*

v.

THE COLUMBIA GAS SYSTEM, INC., ET AL.,
*Respondents.*

## APPENDIX PRESENTED SEPARATELY TO PETITION FOR REHEARING OF ORDER DENYING PETITION WRIT OF CERTIORARI

ROBERT S. SPILMAN, JR.
Kanawha Banking & Trust
Company Building
111 Capitol Street
Charleston, West Virginia

Counsel for Petitioners
The Allen Committee and
Edward D. Spilman

May 22, 1959

# United States District Court

**Eastern District of Kentucky**
**At Lexington**

In Bankruptcy No. 989-B
In the Matter of
INLAND GAS CORPORATION,
Debtor.

In Bankruptcy No. 991-B
In the Matter of
KENTUCKY FUEL GAS CORPORATION,
Debtor.

In Bankruptcy No. 115
In the Matter of
AMERICA FUEL & POWER COMPANY, et al.,
Debtor.

**Alterations and Modifications of Plan of Reorganization Dated February 25, 1958 as Amended**

The following alterations and modifications are proposed on behalf of public holders of First Mortgage 6½% Sinking Fund Gold Bonds, Series A, and of Ten-Year Convertible 6½% Sinking Fund Gold Debentures of Kentucky Fuel Gas Corporation to the Plan of Reorganization dated February 25, 1958, as amended.

A.

In substitution for Article I of the Plan:

"ARTICLE I

"INTRODUCTORY

"*Section 1. The Plan in General*

"The Plan provides for the internal reorganization of Inland. The capital structure of the Reorganized Company will consist of $4,250,000 First Mortgage Serial Sinking Fund Bonds and $7,500,000 par value common stock (of which $4,765,160 par value will be issued upon consummation of the Plan, $470,000 par value will be reserved for conversion of an equal principal amount of First Mortgage Bonds, and the balance will be authorized but unissued).

"The treatment of the classes of creditors affected by the Plan will be as follows:

"A. Public holders of the American Notes will receive in cash the principal amount of their claims together with all Postbankruptcy interest. As of August 31, 1959, it is estimated that the aggregate payment will be $4,927,860, consisting of principal of $1,905,100 and interest of $3,022,760. At that date, therefore, each public holder of a $1,000 American Note will receive in cash about $2,586.

"B. Columbia will receive in cash the principal amount of its Inland Bonds and Debentures together with Defaulted Interest and all Postbankruptcy interest and the principal amount of its unsecured claims

against Inland. As of August 31, 1959, it is estimated that the aggregate payment will be $5,550,519, consisting of: (1) $1,571,054 principal amount of Inland Bonds together with interest of $2,755,381; (2) $320,100 principal amount of Inland Debentures together with interest of $651,671; and (3) $252,313 principal amount of unsecured claims.

"C. Public holders of Kentucky Bonds and Debentures will receive (1) shares of common stock in the Reorganized Company, and (2) the right to subscribe to additional shares of common stock.

"(1) As a class, the public holders of Kentucky Bonds will receive $2,549,720 par value of New Common Stock at the rate of 114 shares of $10 par value stock for each $1,000 Kentucky Bond; the public holders of Kentucky Debentures will receive $715,440 par value of New Common Stock at the rate of 132 shares of $10 par value stock for each $1,000 Kentucky Debenture.

"An underwriting commitment will make it possible for any public holder of Kentucky Bonds or Debentures who desires to sell the New Common Stock to receive in cash the par value of the shares issued to him.

"(2) In addition, the Kentucky public creditors will have the privilege, if they desire, to subscribe at par for an aggregate of $694,650 par value of New Common Stock at the rate of 25 shares of $10 par value stock for each $1,000 Kentucky Bond or Debenture held by them.

"The underwriters will purchase at par all shares of New Common Stock for which Kentucky public creditors do not subscribe. They will also purchase at par

the remaining $805,350 par value of New Common Stock to be issued upon consummation of the Plan. The subscriptions by Kentucky public creditors and purchases by the underwriters will supply the additional funds necessary to finance the reorganization.

"The effect of the alterations and modifications upon the treatment accorded to each affected class of creditors may be summarized as follows:

"*American Public Noteholders*—No change is made in the treatment of this class.

"*Columbia*—In lieu of $3,021,576.29 of common stock as of December 31, 1957, will receive cash of $5,550,519 as of August 31, 1959.

"*Kentucky Public Bondholders and Debentureholders*—In lieu of cash of $2,466,316.50, will receive (1) cash or New Common Stock of $3,265,160, and (2) the right to subscribe to $694,650 par value of New Common Stock.

"*Section 2. Recent Litigation*

"On February 14, 1957 the Court of Appeals, affirming the Order of the District Court entered March 14, 1956, ruled that the public creditors of Kentucky were not entitled to Postbankruptcy interest against the assets of Inland in priority to the subordinated claims of Columbia against Inland. 241 F.2d 374. Petitions for certiorari were denied by the United States Supreme Court on October 14, 1957, and a petition for rehearing was denied on November 18, 1957. 355 U.S. 838, 879.

"The order of March 14, 1956 had directed the Trustees to prepare and file a new plan of reorganization. The Plan dated February 25, 1958, as amended by orders entered April 7, 1958 and June 2, 1958, was proposed by the Trustees pursuant to that direction. Representatives of Kentucky public creditors and of American public stockholders objected to the Plan, but these were overruled by the District Court and the Plan was approved and confirmed. On January 15, 1959, the Court of Appeals dismissed appeals taken by the objectors and affirmed the order of the District Court confirming the Plan, ruling that the District Court had appropriately applied the adjudication as to Post-bankruptcy interest. 262 F.2d 510. Petitions for certiorari were denied by the United States Supreme Court on April 27, 1959.

"The financial condition of the Debtors has now been improved to the extent that with institutional financing and the underwriting of new common stock it has become possible to provide sufficient cash, in addition to that available in the Debtors' estates, (1) to pay all administrative and priority claims, (2) the claims of the public holders of the American Notes, and (3) the claims of Columbia against Inland; and also to preserve the residual values in the Debtors' estates for the benefit of the Kentucky public creditors in partial satisfaction of their unpaid claims or Kentucky Bonds and Debentures by offering them New Common Stock which they may retain or sell for cash as they individually deem desirable."

B.

In substitution for the last paragraph of Section 2, Article II of the Plan:

"The remaining assets of Inland consists of cash on hand and in banks, receivables, inventories of materials and supplies, and prepaid expenses and deferred charges, all of which are reflected in the balance sheet of Inland as of December 31, 1958, which is part of 'Exhibit A' attached hereto and made a part hereof."

C.

In substitution for the last sentence of Section 2, Article III of the Plan:

"* * * The assets of Kentucky as of December 31, 1958, consists of $8,855.60 in cash and approximately 26% of the capital stock of Inland as shown by 'Exhibit B'."

D.

In substitution for Section 3, subdivisions (a) and (b) of Article III of the Plan:

"(a) During the course of the Proceedings, pursuant to order of the Court, a payment equal to 18% of the principal amount was made on the Kentucky Bonds, which for purposes of the Plan is regarded as having been applied upon accrued and unpaid interest. For Plan purposes, therefore, the principal amount of the Bonds held by creditors other than Columbia is $2,236,600. As of December 31, 1958, the accrued and unpaid interest exceeded $3,700,000.

"(b) The Kentucky Debentures which are outstanding and in the hands of creditors other than Columbia aggregate $542,000 principal amount. As of Decem-

ber 31, 1958, the accrued and unpaid interest was $1,006,990.35."

E.

"ARTICLE V

"VALUATION".

F.

In substitution for Section 3, Article V of the Plan:

"*Section 3. The Reorganization Value as of December 31, 1957.*

"At the direction of the Inland Trustee, L. E. Kihlken, in a report filed in February 1958, arrived at a valuation of $10,538,800 as of December 31, 1957 for Inland and the American subsidiaries. This value was adopted by the District Court and affirmed by the Court of Appeals.

"In its Third Advisory Report on the Plan, dated May 1, 1958, the Securities and Exchange Commission found a value for the same assets of $12,020,100. Witnesses at the hearings on the Plan testified to higher values; these values were not adopted by the District Court."

G.

In substitution for Section 2, Article VI of the Plan:

"*Section 2. Classification*

"For purposes of the Plan and its acceptance, such claims and interests are classified as follows:

"Class 1—Claims to be paid in cash in full.

"(a) Claims of creditors of, and holders of liabilities against, the Trustees, including reorganization expenses, allowances, and fees.

"(b) Claims of the United States of America by reason of any and all federal taxes or customs duties.

"(c) Claims of state and local taxing authorities with respect to taxes.

"(d) Claims with respect to Workmen's Compensation.

"(e) Sundry unsecured general claims against Inland, other than those held by Columbia.

"(f) Claims of holders, other than Columbia, of American Notes (including Postbankruptcy interest).

"(g) Claims of Columbia as holder of Inland Bonds and Debentures (together with Defaulted Interest and Postbankruptcy Interest thereon) and of general claims against Inland (excluding Postbankruptcy Interest).

"Class 2—Claims entitled to participate under the Plan.

"(a)(i) Claims of holders, other than Columbia, of Kentucky Bonds; and

"(a)(ii) Claims of holders, other than Columbia, of Kentucky Debentures.

"Class 3—Claims and interests not entitled to participate under the Plan.

"(a) All claims for which payment is not hereinabove provided, including inter-company claims, and all interests of the stockholders of American and Kentucky, and the interests of the public stockholders of Inland."

H.

In substitution for Sections 1 and 2 of Article VII of the Plan:

"ARTICLE VII

"THE REORGANIZED COMPANY

"*Section 1. Assets of the Reorganized Company*

"The Reorganized Company will be Inland or a new corporation and will acquire all the assets of the Debtors by reversion, transfer, merger or consolidation. The assets of the Reorganized Company shall be free and clear of all mortgages, liens and claims except as provided for in the Plan or in the order confirming the Plan.

"*Section 2. Capitalization of the Reorganized Company*

"The capitalization of the Reorganized Company will be as follows:

"A. *The New Institutional First Mortgage Bonds.* The Reorganized Company will issue $4,250,000 Serial

First Mortgage Sinking Fund Bonds due October 1, 1971, consisting of $2,530,000 Series A Bonds, $470,000 of Series B Bonds and a $1,250,000 Series C Note (referred to collectively as the New Bonds).

The terms and conditions of the New Bonds are outlined in a letter from Kidder, Peabody & Co., Inc., investment bankers, transmitting commitments to purchase the New Bonds from Massachusetts Mutual Life Insurance Company of Springfield, Massachusetts, Home Life Insurance Company of New York and Empire Trust Company of New York ('Exhibit E'). The Series A New Bonds will bear interest at the rate of 5½% per annum and will be retired by cash sinking fund payments of $315,000 each on October 1, 1963 and each October 1st thereafter through 1969, and, the balance of $325,000 on October 1, 1970. The Series B New Bonds will bear interest at the rate of 5½% per annum, will have no sinking fund and will be due on October 1, 1971; they will be convertible (beginning one year from issuance and continuing until maturity) into shares of new common stock at the rate of 100 shares of new common stock $10 par value) for each $1,000 Series B Bond. The Series C Note will bear interest at the rate of 5% per annum and will require sinking fund retirements of $400,000 per annum during 1960 and 1961 and $450,000 during 1962; it will be issued in exchange and to secure the $1,250,000 5% loan to be made by Empire Trust Company, as outlined in 'Exhibit E', repayable in quarter-annual installments of $100,000 each.

All of the New Bonds are to be equally secured by a first mortgage lien on substantially all of the fixed assets of the Reorganized Company and a pledge of

its gas leases and gas purchase and gas sales contracts. All terms and provisions of the New Bonds and their mortgage indenture not specified in 'Exhibit E' shall be subject to the approval of the Court.

"B. *New Common Stock.* The Reorganized Company will be authorized to issue 750,000 shares of New Common Stock having a par value of $10 per share, which shall be fully paid and non-assessable; 476,516 shares will be issued upon consummation of the Plan, 47,000 shares will be reserved for conversion of the Series B New Bonds, and the remaining shares will be authorized but unissued. At all meetings of stockholders of the Reorganized Company, each share of stock shall be entitled to one vote."

and by adding to Article VII:

"*Section 4. Initial Board of Directors*

"The initial Board of Directors shall consist of not more than seven directors. For the first year, three of the directors shall be nominated by the underwriters and the remaining directors shall be nominated by Kentucky public creditors; the membership of the first Board of Directors shall be subject to the approval of the Court and acceptable to the underwriters.

"The underwriters and the proponents of the Plan have agreed upon the following nominations:

"BEN WILLIAMSON, JR.—Trustee of Inland and Kentucky and in charge of operations since 1937.

"O. H. HORNE—General Manager for the Inland Trustee and associated with the Inland operations since 1928.

"AL. A. LIPPE—Executive Vice President, Treasurer and Director of Standard Gas & Electric Corporation; Director and Member of Executive Committee of South Jersey Gas Co.; Executive Vice President and Director of Ohio Gas Company; and director in other companies.

"JOSEPH F. DEMPSEY—President of Dempsey & Company, one of the underwriters.

"ARTHUR S. BOWES—Vice Chairman of the Board of H. M. Byllesby & Company, Inc., one of the underwriters.

"The proponents will make additional nominations if the Board is increased to seven directors."

I.

In substitution for Article VIII of the Plan:

"ARTICLE VIII

"TREATMENT OF CLAIMS OF CREDITORS AND STOCKHOLDERS

"1. COSTS AND EXPENSES OF ADMINISTRATION. The expenses of the Proceedings and of the Plan and its consummation (including the fees of the investment bankers who obtained commitments to purchase the First Mortgage Bonds, the Institutional commitment

fees and the standby fees of the underwriters of the New Common Stock) and all administration expenses, compensation, fees, disbursements, expenses and other allowances made or to be made by the Court, shall be assumed by the Reorganized Company and paid by it in cash in full.

"2. OBLIGATIONS INCURRED BY TRUSTEES IN OPERATION OF BUSINESS. All debts and obligations incurred by the Trustees in connection with the operation of the business of the Debtors shall be assumed by the Reorganized Company and paid in cash in full in the ordinary course of business.

"3. CLAIMS OF TAXING AUTHORITIES. The claims of the United States for taxes and customs duties and the claims of state and local taxing authorities for taxes shall be paid in cash in full.

"4. WORKMEN'S COMPENSATION CLAIMS. Workmen's Compensation claims shall be paid in cash in full.

"5. SUNDRY UNSECURED CLAIMS AGAINST INLAND. All unsecured claims against Inland, other than those held by Columbia, shall be paid in cash in full.

"6. AMERICAN PUBLIC CREDITORS. The holders of American Notes, other than Columbia, shall be paid in cash in full the principal amount of their Notes together with unpaid interest thereon.

"7. COLUMBIA'S CLAIMS AGAINST INLAND. Columbia shall be paid in cash in full the principal amount and unpaid interest of its Inland Bonds and Debentures and the principal amount of its unsecured claims against Inland.

"8. KENTUCKY PUBLIC CREDITORS.

"(a) KENTUCKY BONDHOLDERS. The holders of Kentucky Bonds, other than Columbia, shall receive as a class:

(i) $2,549,720 par value of New Common Stock; and

(ii) the right to subscribe at par to $559,150 par value of New Common Stock.

"Each public holder of a $1,000 principal amount Kentucky Bond shall receive:

(iii) 114 shares of New Common Stock; and

(iv) the right to subscribe at par to 25 shares of New Common Stock.

"(b) KENTUCKY DEBENTUREHOLDERS. The holders of Kentucky Debentures, other than Columbia, shall receive as a class:

(v) $715,440 par value of New Common Stock; and

(vi) the right to subscribe at par to $135,500 par value of New Common Stock.

"Each public holder of a $1,000 principal amount Kentucky Debenture shall receive:

(vii) 132 shares of New Common Stock; and

(viii). the right to subscribe at par to 25 shares of New Common Stock.

"No fractional shares or scrip will be issued, but cash will be provided in lieu thereof on the basis of $10 per share.

"9. OTHER CLAIMS AND STOCK INTERESTS. No provision is made for other claims or for the interests of

the public stockholders of Inland and the stockholders of American since the assets of the Debtors are insufficient."

J.

In substitution for Sections 1, 2 and 4 of Article IX of the Plan:

"*Section 1. Compliance with Statutory Provisions*

"The Plan, as altered and modified, shall be approved, accepted, confirmed and consummated in accordance with the provisions of Chapter X of the Bankruptcy Act.

"*Section 2. Effective Date of Plan*

"The Effective Date of the Plan is August 31, 1959 and the Plan shall be consummated as of that date or such other practicable date as the Court shall fix.

"Until consummation of the Plan, the Inland Trustee shall continue to operate the properties and estate of Inland."

* * *

"*Section 4. Obligations Assumed by Reorganized Company*

"The Reorganized Company shall assume:

"A. All current liabilities of Inland and the Inland Trustee as of the close of business on the date determined by the Court for consummation of the Plan, as certified by the auditor of the Inland Trustee;

"B. All gas purchase and gas sales contracts;

"C. All executory contracts of Inland and the Inland Trustee, including unexpired leases, easements, and new agreements, which have not been rejected or disaffirmed in the Proceedings, unless the Reorganized Company, with leave of the Court, shall disaffirm the same prior to the date of consummation of the Plan;

"D. All obligations of the employer under contracts entered into by the Inland Trustee with the approval of the Court providing for pension or retirement benefits for Inland employees;

"E. All non-monetary obligations of the Trustees, if any, under Section 278.485 of the Kentucky Revised Statutes;

"F. All franchise taxes which may be due and payable by Inland to the State of Delaware in the event, but only in the event, the Reorganized Company is Inland; and

"G. Monies heretofore ordered distributed by the Court to public holders of American Notes and Kentucky Debentures and remaining unclaimed.

"*Section 5. Underwriting of New Common Stock*

"Pursuant to a commitment received from Dempsey & Company and H. M. Byllesby & Company, Inc. ('the underwriters'), a copy of which is annexed hereto ('Exhibit F'), the public holders of Kentucky Bonds and Debentures who wish to do so may sell to the underwriters at par all or part of the shares issued to them under the Plan within ten days prior to the expiration of the underwriters' commitment or within such

extended time as the underwriters in their sole discretion may fix.

"All shares of New Common Stock for which public holders of Kentucky Bonds or Debentures do not subscribe will be purchased at par by the underwriters. The right of Kentucky public holders to subscribe for New Common Stock shall expire ten days prior to the expiration of the underwriters' commitment or on such later date as the underwriters in their sole discretion may fix.

"Certain public holders of Kentucky Bonds and Debentures have advised the underwriters that they will not sell their shares of New Common Stock but will retain the shares and will also exercise their rights to subscribe. It is estimated that these holders will be entitled under the Plan to receive and subscribe for an aggregate of approximately 145,000 shares. With respect to the remaining shares of New Common Stock which the underwriters may be required to purchase, the underwriters will receive on account of their underwriting expenses 10 cents per share payable by the Reorganized Company as an expense of consummating the Plan.

"The underwriters have also agreed to purchase an addiitonal 80,535 shares of New Common Stock at $10 per share to furnish additional funds necessary to consummate the Plan and the Reorganized Company shall sell such shares to the underwriters."

K.

In substitution for Article X of the Plan:

"ARTICLE X

"ACCEPTANCE OF THE PLAN

"The Plan shall be submitted for acceptance to the holders of claims in Class 2: the public holders of Kentucky Bonds and Debentures. The forms for proving their claims and indicating their acceptance or rejection of the Plan shall be prescribed by the Court."

L.

In substitution for Sections 1 and 2 of Article XI of the Plan:

"*Section 1. Payment of American Notes and Columbia*

"As soon as practicable after the Confirmation Date, and thereafter from time to time as funds become available, cash distributions shall be made, with the approval of the Court, to the public holders of the American Notes. With respect to the distribution to be made on the American Notes, the Court shall fix a Date of Payment on which final payment on the securities shall commence and after such date no interest shall accrue on the securities.

"As soon as practicable after the Confirmation Date, and either simultaneously with the final payment of the American Notes or thereafter as funds become

available, cash distribution shall be made, with the approval of the Court, to Columbia.

"*Section 2. Kentucky Public Creditors*

"As soon as practicable after the Confirmation Date, the Court shall prescribe the mechanics for exchanging Kentucky Bonds and Debentures for voting trust certificates and new debentures, if any, and may appoint an Exchange Agent for this purpose. Either before or after such date, the Court shall also approve the mechanics for exercising subscriptions to New Common Stock and selling New Common Stock to the underwriters."

M.

In substitution for Sections 1 and 8 of Article XII of the Plan:

"*Section 1. Tax Ruling and Closing Agreement*

"The Plan shall not be consummated until the following is obtained from the Treasury Department of the United States:

"(a) An official ruling to the effect that consummation of the Plan will not result in any Federal income tax liability to the estates of the Debtors;

"(b) An official ruling that either (i) a tax-free organization will be effected under the Plan with respect to the transfer of the properties of the Debtors in the Reorganized Company and the exchange by the Kentucky public creditors of their claims for New Common Stock of the Reorganized Company, or (ii) a

taxable reorganization will be effected with respect to such exchange and the Reorganized Company will acquire a new tax basis, and not the predecessors' tax basis, with respect to the properties of the Debtors transferred to the Reorganized Company; and

"(c) A final closing agreement, in such form and under such conditions as the Treasury Department may impose, under and by the terms of which all federal income tax obligations of the Debtors and the Trustees are finally determined."

N.

By adding the following definitions to those on page 1 and 2 of the Plan:

"American public creditors—The public holders of $1,905,100 principal amount of American Notes.

"Inland Bonds—First Mortgage 6½% Sinking Fund Gold Bonds of Inland.

"Inland Debentures—Ten-Year 7% Sinking Fund Debentures of Inland.

"Kentucky public creditors—The public holders of $2,778,600 principal amount of Kentucky Bonds and Debentures.

"New Bonds—The First Mortgage Sinking Fund Serial Bonds of the Reorganized Company to be issued in accordance with the provisions of the Plan.

"Public holders—Holders, other than Columbia, of American Notes, Kentucky Bonds or Kentucky Debentures.

"Underwriters—Dempsey & Company and H. M. Byllesby and Company, Inc., underwriters of the New Common Stock."

O.

In substitution for Exhibits A through H, the following exhibits shall be attached to the Plan:

EXHIBIT A—Comparative Balance Sheet as of December 31, 1958 of Ben Williamson, Jr., Trustee, Inland Gas Corporation (Combining Accounts of Corporation and Trustee) in the form transmitted to creditors of the Debtors.

EXHIBIT B—Balance Sheet as of December 31, 1958 of Kentucky Fuel Gas Corporation prepared by Eskew, Gresham & Diersen, Certified Public Accountants.

EXHIBIT C—Consolidated Balance Sheet as of December 31, 1958 of American Fuel and Power Company and Wholly-Owned Subsidiaries prepared by Eskew, Gresham & Diersen, Certified Public Accountants.

EXHIBIT D—Comparative Statement of Earnings for Twelve Months Ended December 31, 1957 and December 31, 1958 of Ben Williamson, Jr., Trustee, Inland Gas Corporation (Combining Accounts of Corporation and Trustee) in the form transmitted to creditors of the Debtors.

EXHIBIT E—Letter of Kidder, Peabody & Co., Inc., and annexed letters of Massachusetts Mutual Life Insurance Company, Home Life Insurance Company and

Empire Trust Company, relative to purchase of New Bonds.

EXHIBIT F—Underwriting of New Common Stock.

Whenever the Plan refers to December 31, 1957 figures, substitute, if feasible, December 31, 1958 figures as contained in the foregoing exhibits.

**Exhibit E**

KIDDER, PEABODY & CO.
Incorporated

WHOLLY OWNED AFFILIATE OF KIDDER, PEABODY & CO.

17 Wall Street
New York
123 South Broad Street
Philadelphia

75 Federal Street
Boston
33 South Clark Street
Chicago

New York 5, N. Y.
April 30, 1959

Honorable H. Church Ford
United States District Judge
United States District Court
Lexington, Kentucky

Mr. Ben Williamson, Jr.
Trustee, Inland Gas Corporation
and Kentucky Fuel Gas Corporation
Ashland, Kentucky

Mr. Clinton M. Harbison
Trustee, American Fuel & Power Company
and Subsidiaries
Lexington, Kentucky

Re: Inland Gas Corporation
Kentucky Fuel Gas Corporation,
American Fuel & Power Company,
et al., Debtors in Bankruptcy
Nos. 989-B, 991-B, 115

Dear Sirs:

At the request of Kentucky public creditors, we have succeeded in placing privately $4,250,000 of First Mortgage Serial Sinking Fund Bonds, due October 1, 1971, to be issued by the Reorganized Company. The proceeds of the New Bonds are to be used to finance Alterations and Modifications which we understand Kentucky public creditors intend to propose to the Plan of Reorganization dated February 25, 1958, as amended by orders entered April 7 and June 2, 1958. The commitment letters of the prospective purchasers and the terms and conditions of the three series of New Bonds are annexed hereto.

Subject to the matters referred to in the annexed commitment letters, Empire Trust Company of New York, New York has agreed to purchase $1,250,000 principal amount of Series C 5% New Bonds; Massachusetts Mutual Life Insurance Company of Springfield, Massachusetts has agreed to purchase $1,900,000 principal amount of the Series a 5½% New Bonds and $350,000 principal amount of the Series B 5½% Convertible New Bonds; and Home Life Insurance Company of New York, New York has agreed to purchase $630,000 principal amount of the Series A 5½% New Bonds and $120,000 principal amount of the Series B 5½% Convertible New Bonds.

As a condition of making these commitments available for use in effectuating the Alterations and Modifications to be proposed by Kentucky public creditors, we are to receive the customary agent's fee of $45,000 in compensation for our services.

If the financing commitments are approved by the court, and accepted by security holders, we shall be pleased to assist in the consummation of the financing.

Very truly yours,

KIDDER, PEABODY & CO., INCORPORATED
By DUDLEY F. CATES
Vice-President

---

MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY
Springfield Massachusetts
Organized 1881

HOMER N. CHAPIN
Executive Vice President
Investments

April 9, 1959

Kidder, Peabody & Co., Inc.
17 Wall Street
New York 5, New York

Gentlemen:

You have recently presented to us financing proposed by certain creditors of Inland Gas Corporation in connection with their proposed plan of reorganization for Inland. We understand that this plan, which is briefly outlined as to its general terms in the accompanying memorandum, involves the issuance by the reorganized Inland Gas Corporation of up to $4,250,000 first mortgage obligations, consisting of the following: $2,530,000 Series "A" 5½% Bonds due October 1, 1971; $470,000 5½% Series "B" Convertible Bonds due October

1, 1971; and $1,250,000 5% Series "C" First Mortgage Note due October 1, 1962.

Our Executive Committee has approved the purchase of $1,900,000 of such Series "A" and of $350,000 of such Series "B" Bonds of Inland Gas Corporation. We are enclosing a memorandum setting forth a brief description of some of the principal terms applicable to these issues. Our purchase of these Bonds is contingent upon Court approval of the reorganization plan and the other requirements mentioned in the memorandum, and is subject to the execution nad delivery of a purchase agreement and other necessary documents, acceptable to Inland and to us and our counsel, setting forth these terms and others customary and appropriate in transactions of this kind.

If the proposed reorganization plan is approved by the District Court, counsel mutually agreeable will represent us and, as is customary, their fees and all expenses in connection with this transaction will be paid by Inland Gas Corporation.

Very truly yours,

HOMER N. CHAPIN

Executive Vice President—Investments

HNC:JKB:jp
Enclosure

---

## [ACCOMPANYING MEMORANDUM]

### PROPOSED TERMS

### INLAND GAS CORPORATION

### First Mortgage Bonds

Issues:

(1) $2,530,000 5½% Series "A" First Mortgage Sinking Fund Bonds due October 1, 1971

(2) $470,000 5½% Series "B" First Mortgage Convertible Bonds due October 1, 1971

(3) $1,250,000 5% Series "C" First Mortgage Note due October 1, 1962.

All three issues are to be closed at the amounts originally issued.

Purchase Price:

Par plus accrued interest (if any).

Massachusetts Mutual Commitment:

$1,900,000 Series "A" Bonds, and $350,000 Series "B" Bonds. This commitment is contingent upon, among other things, (1) commitments from responsible parties for the balance of all issues of mortgage debt and (2) commitments from others to purchase newly issued common stock of the reorganized company for cash of not less than $1,500,000.

Term of Commitment:

The Massachusetts Mutual commitment will expire on September 1, 1960.

Commitment Fee:

On the closing date, Inland is to pay the Massachusetts Mutual a commitment fee calculated at the rate of ½ of 1% per annum on the amount of mortgage bonds purchased. This commitment fee is to be calculated from April 9, 1959.

Certain General Conditions to Loan:

(1) Approval by the District Court of a reorganization plan following the general lines outlined below under "Use of Proceeds", and issuance by the Court of an order confirming this plan, such order to be beyond appeal and binding upon all parties.

(2) A final settlement with the Treasury Department for all prior years' Federal Income Taxes in a manner not inconsistent with the proposed reorganization plan.

(3) An opinion of counsel for the bond purchasers that the Mortgage Bonds will have a lien upon substantially all the fixed assets, gas leases, and gas purchase and sales contracts of Inland, ranking prior to all other liens and claims against Inland, except unpaid reorganization expenses.

Closing:

The closing date is to be as soon after the issuance of the order of confirmation referred to above as can conveniently be arranged.

Security:

Both series of Mortgage Bonds are to be equally secured and are to be issued under a trust indenture having general provisions similar to other mortgage bond issues of this type. The Series "C" First Mortgage Note is to be equally secured with the Mortgage Bonds. The Bond and Note proceeds are to be used for the purposes outlined under "Use of Proceeds". It is contemplated that issuance of the mortgage obligations and discharge of the various claims upon Inland would occur virtually simultaneously, so that Inland could then be declared a newly reorganized company. The Bonds are to be secured by a first lien upon substantially all of the fixed assets of Inland and a pledge of the company's gas leases and gas purchase and sales contracts. Such contracts are to include all of the presently effective contracts between the Inland trustee and Inland's industrial customers.

Redemption:

Both series of Mortgage Bonds may be redeemed at par at any time for sinking fund purposes or from eminent domain, insurance or similar proceeds; the bonds are to be otherwise redeemable at a price of 105½ during the first 12 months after issuance, with the call price reducing ½ of 1% in each 12-month period thereafter; provided, however, that the bonds shall not be callable during the first six years after issuance as the result of transactions involving the borrowing of funds at an effective interest cost of less than 5½% per annum.

Use of Proceeds:

Together with available cash of Inland and the $1,500,000 proceeds from the sale of additional common stock, the proceeds from the sale of the Mortgage Bonds and Note are to be advanced to the Inland trustee in order to pay the following claims under the proposed plan of reorganization: (1) tax claims and various expenses of the trustee and other reorganization expenses, to the extent that they are not assumed by the reorganized company; (2) payment of full principal and accrued interest on the American Fuel Notes (amounting to about $4,838,000 as of December 31, 1958); (3) payment of principal and accrued interest to Columbia Gas in satisfaction of its bond and debenture claims against Inland and the principal of its unsecured claims against Inland, (amounting in total to about $5,417,500 as of December 31, 1958); and (4) to provide the reorganized company with cash working funds of about $300,000. Common stock of the reorganized company is to be issued to the holders of the Kentucky Fuel Bonds and Debentures in satisfaction of their claims. It is expected that the bulk of the reorganization expenses, which were estimated at $796,000 as of December 31, 1957, will be assumed by the reorganized company and discharged from time to time as they are approved for payment by the District Court.

To the extent that the Court determines that proceeds of the mortgage obligations are not needed for the above purposes, the amounts of the obligations (and the commitment of each purchaser) are to be reduced proportionately for each series to the extent of cash not needed. After completion of the reorganization, it

is expected that the only debt of Inland in addition to the mortgage debt will consist of any unpaid reorganization expenses and current liabilities incurred in the ordinary course of business.

Sinking Fund:

(1) The Series "C" Note is to have a cash sinking fund that will retire $400,000 on October 1, 1960, $400,000 on October 1, 1961, and $450,000 at maturity on October 1, 1962.

(2) The Series "A" Bonds are to have a cash sinking fund that will retire $315,000 bonds on each October 1, 1963 to 1969 inclusive, and the balance of $325,000 on October 1, 1970.

(3) The Series "B" Bonds are to have no sinking fund.

All sinking fund payments are to be proportionately reduced to the extent that less than $4,250,000 mortgage debt is issued.

Conversion:

Each Series "B" Bond of $1000 denomination is to be convertible into 100 shares of common stock (par $10) beginning one year from issuance and continuing until maturity. This conversion ratio assumes that the reorganized company will have outstanding initially 500,000 shares of common stock (par $10). A total of 47,000 shares of additional common stock is to be reserved for the conversion of the Series "B" Bonds, and conversion rights are to be protected against dilu-

tion. If, in the opinion of bondholder's counsel, registration with the Securities & Exchange Commission of the Series "B" Bonds or the additional stock issuable upon conversion is required for the purposes of conversion, or if the Inland common stock to be outstanding is registered, the reorganized company will undertake the registration of the Series "B" Bonds or such additional stock and pay all attendant expenses.

Debt Permitted:

The reorganized company is to have no debt except the following:

(1) The Series "A" and Series "B" Mortgage Bonds and the Series "C" Mortgage Note.

(2) No additional mortgage bonds, except with the consent of the holders of 75% of the outstanding Mortgage Bonds.

(3) Unsecured current or term borrowings not to exceed $500,000 at any one time outstanding, except with the consent of the holders of 75% of the outstanding Mortgage Bonds.

(4) Estimated liability for reorganization expenses, which as of the consummation date is not to exceed $1,000,000.

Mergers, etc.

Inland may not merge or consolidate with another company except with consent of the holders of 75% of the outstanding Mortgage Bonds.

Working Capital Requirement:

None as such. (See "Dividend Restrictions" below).

Dividend Restrictions:

Dividends upon the capital stock of the reorganized companay, or repurchases of such stock except from stock sales proceeds, are to be limited to 75% of the net income of the company after income taxes accumulated subsequent to the closing date. Such net income is to be calculated after the deduction of the greater of (a) depreciation accrued by the company subsequent to the closing date, or (b) the aggregate sinking fund payments on the Mortgage Bonds and Note. Furthermore, no dividend or other disbursement upon the capital stock is to be made after the closing date unless after giving effect thereto the net working capital (current assets minus current liabilities) of Inland would be at least $300,000. For the purposes of this computation, (1) inventories of materials and supplies are to be excluded from current assets; (2) the estimated liability for all reorganization expenses is to be included in current liabilities; and (3) sinking fund payments due on the Mortgage Bonds and Note within twelve months are to be excluded from current liabilities.

Other Terms:

Other terms contained in the indenture are to be similar to those customarily found in other indentures securing bonds of this type.

Legal:

All legal matters in connection with this financing are to be approved by independent counsel for the purchasers of the Mortgage Bonds, with all reasonable expenses of such counsel to be paid, subject to the

approval of the Court, by the reorganized company upon consummation of the financing.

---

Incorporated 1860

HOME LIFE INSURANCE COMPANY
256 Broadway, New York 8, N. Y.
BEekman 3-6400

ROBERT D. GUIBORD
Second Vice President
SECURITIES

April 30, 1959

"Our 99th Year"

Kidder, Peabody & Co.
17 Wall Street
New York 5, New York
Attention: Mr. Joseph B. Wyatt

Gentlemen:

You have recently presented us with a financing proposal made by certain creditors of Inland Gas Corporation in connection with their plan of reorganization for Inland. In accordance with this plan $4,250,000 First Mortgage Bonds will be issued, said bonds to be in three series comprised of $1,250,000 Series C, 5% Bonds to mature within three years after issuance, $2,530,000 Series A, 5½% Sinking Fund Bonds due 1971 and $470,000 Series B, 5½% Convertible Bonds due 1971.

Other proposed terms of the new bond financing we understand are to conform to the four-page memorandum dated April 9th, which accompanied the commitment letter of the Massachusetts Mutual Life Insurance Company of the same date with certain changes which have subsequently been agreed upon, namely, that the sinking fund on the Series A Bonds held by life insurance company investors will not commence for a period of approximately three years from the issuance date of the Bonds in order to permit the repayment in full of $1,250,000 of the Series C Bonds which it is presently contemplated will be taken by a banking institution.

This is to inform you that our Finance Committee has approved the purchase of $750,000 Inland Gas Corporation First Mortgage 5½% Bonds due 1971, it being understood that $630,000 of this amount will be Series A Bonds and $120,000 Series B Bonds. Our purchase of these bonds is contingent upon court approval of the reorganizational plan and is subject to the execution and delivery of a purchase agreement and other necessary documents acceptable to Inland and to us and our counsel, setting forth the terms as specified above together with others customarily and appropriate in transactions of this kind.

The purpose of this letter is to tell you that the terms of the financing as presented in Kidder, Peabody's memorandum and in the four-page memorandum of Massachusetts Mutual dated April 9th are, in principle, satisfactory to us, that we are desirous of entering into a purchase contract covering this financing and that we have authority to do so but that any binding commitment on our part is subject to execution of a pur-

chase agreement and indenture satisfactory to us and our counsel.

Sincerely,

ROBERT GUIBORD.

RDG:HC

---

EMPIRE TRUST COMPANY
Oil & Natural Gas Department
20 Broad Street . New York 5, N. Y.

WILLIAM B. SNYDER
Vice President

April 28, 1959

Kidder, Peabody & Co., Incorporated
17 Wall Street
New York 5, New York

Dear Sirs:

We have reviewed the March 1959 Memorandum of Private Placement of $4,500,000 of Bonds of Inland Gas Corporation ("Inland") which you submitted and have discussed with you a loan by us to Inland in the amount of $1,250,000.

This will confirm our commitment, subject to the terms and limitations hereinafter set forth, to lend $1,250,000 to Inland, at an interest rate of 5% per annum, repayable $100,000 quarterly commencing three months after making of the loan. Our loan shall

be evidenced by a note or notes secured by a first mortgage on all of the company's fixed assets, gas leases and gas purchase and sales contracts and be issued under a First Mortgage Indenture, securing an issue of notes and bonds limited to $4,500,000.

Our loan will be contingent upon court confirmation of a plan of reorganization of Inland approving an overall financing program of Inland, including the borrowing from us and subject to the execution and delivery of a Loan Agreement, Mortgage, Note and other necessary and appropriate documents, in form and substance satisfactory to Inland and to us and to our counsel and containing terms and provisions customary and appropriate in transactions of the character contemplated, and to approval of all legal matters by our counsel.

The closing of our loan shall be as soon as possible after the entry of a final order of confirmation of a plan of reorganization of Inland. The commitment made by this letter shall expire on September 1, 1960. On the closing date Inland shall pay us a commitment fee calculated at the rate of ½ of 1% per annum from April 28, 1959 on $1,250,000. In addition, Inland shall make payment at the closing of the fees and expenses of our counsel in connection with the making of the loan.

Our loan shall be made concurrently with the issue and sale by Inland of $3,250,000 of First Mortgage Bonds and the sale of common stock to private capital of at least $1,500,000.

It is agreeable to have our note or notes and the aforesaid First Mortgage Bonds issued under the same First Mortgage Indenture, provided that, except in

the event of default, there shall be no required or permitted prepayment of principal of the mortgage bonds until after the final maturity of our note. Interest on the mortgage bonds may be paid concurrently with interest upon our note. In the event of default, the mortgage bonds and our note shall rank equally and participate pari passu.

The First Mortgage Indenture shall contain the usual provisions for a financing of the nature contemplated and the granting of a first mortgage on all assets of Inland as security for our note.

Our Loan Agreement with Inland shall provide for the use of the proceeds from our loan and from the sale of mortgage bonds in a manner satisfactory to Inland, the purchasers of the mortgage bonds and ourselves. In addition, the Loan Agreement shall contain provisions, satisfactory to Inland, the purchasers of the mortgage bonds and ourselves, limiting the incurring of debt by Inland, except with our consent, and limiting the payment of dividends.

The Loan Agreement will also provide that a condition to our making the loan will be the continued existence of the present contracts of Inland for the purchase and sale of gas and no material adverse change in the business and assets of Inland between now and the closing date.

Any conditions precedent established by the purchasers of the mortgage bonds shall also be deemed to be conditions precedent to the making of our loan.

Very truly yours,

EMPIRE TRUST COMPANY

WILLIAM B. SNYDER

Vice-President

**Exhibit F**

DEMPSEY & COMPANY
Investment Bankers
135 South La Salle Street
Chicago 3, Illinois
Members
Midwest Stock Exchange

April 20, 1959

Honorable H. Church Ford
United States District Judge
United States District Court
Lexington, Kentucky

Mr. Ben Williamson, Jr.
Trustee, Inland Gas Corporation
and Kentucky Fuel Gas Corporation
Ashland, Kentucky

Mr. Clinton M. Harbison
Trustee, American Fuel & Power Company
and Subsidiaries
Lexington, Kentucky

Re: Inland Gas Corporation, Kentucky Fuel Gas Corporation, American Fuel & Power Company, et al., Debtors
In Bankruptcy Nos. 989-B, 991-B, 115

Dear Sirs:

We refer to the Plan of Reorganization dated February 25, 1958, as amended by Orders entered April 7 and June 2, 1958 ("the Plan").

We are also familiar with Alterations and Modifications to the Plan which are proposed to be filed on behalf of Kentucky public creditors. The various terms and abbreviations used herein are those used in the Plan and the Alterations and Modifications.

The principal features of the Alterations and Modifications, copy of which is annexed hereto, are as follows:

1. The capital structure of the Reorganized Company will consist of (a) $4,250,000 New First Mortgage Serial Sinking Fund Bonds due October 1, 1971, of which $1,250,000 will bear interest at the rate of 5% per annum and the balance at the rate of 5½% per annum, and (b) 750,000 shares of $10 par value New Common Stock. Of the 750,000 authorized shares of New Common Stock, 476,516 shares will be issued upon consummation of the Plan and 47,000 shares will be reserved for conversion of $470,000 principal amount of the First Mortgage Bonds.

2. Excess funds in the estates of the Debtors, together with the proceeds of the New First Mortgage Bonds to be purchased by institutions and of subscriptions to New Common Stock, will be used to make the following cash distributions:

a. Payment in full of the principal and unpaid interest on the publicly-held American Notes, estimated to aggregate approximately $4,927,860 at August 31, 1959.

b. Payment in full of the principal and unpaid interest on the Inland Bonds and Inland Debentures held by Columbia and the principal of Columbia's general

claims against Inland, estimated to aggregate approximately $5,550,519 at August 31, 1959.

3. Administrative claims, costs of administration, tax claims, workmen's compensation claims and sundry general claims against Inland will also be paid in full by the Trustees or the Reorganized Company.

4. Kentucky public creditors will receive the following shares of new common stock and rights to subscribe to such shares:

a. Each public holder of a $1,000 principal amount Kentucky Bond will receive 114 shares of new common stock and the right to subscribe to 25 shares of new common stock at $10 per share. As a class, the public holders of Kentucky Bonds will receive $2,549,720 par value of new common stock and the right to subscribe at par to $559,150 par value of new common stock.

b. Each public holder of a $1,000 principal amount Kentucky Debenture will receive 132 shares of new common stock and the right to subscribe to 25 shares of new common stock at $10 per share. As a class the public holders of Kentucky Debentures will receive $715,440 par value of new common stock and the right to subscribe to $135,500 par value of new common stock.

5. No other claims and no stock interests will participate in the reorganization.

Subject to the terms and conditions hereinafter set forth, we undertake as follows:

A. To purchase from Kentucky public creditors who receive new common stock under the Plan all or any

part of the shares they desire to sell to us at $10 per share;

B. To purchase at $10 per share all or any part of the total of 69,465 shares to which Kentucky public creditors do not subscribe;

C. To purchase at $10 per share 80,535 shares of new common stock; and

D. We shall also purchase at the rate of $10 per share any scrip which it is necessary to issue because a holder is not entitled to a full share, which scrip we shall promptly convert into full shares so far as possible. If any scrip remains outstanding we shall sell it to the Reorganized Company, upon request, at the rate of $10 per share.

The following are the terms and conditions of our undertaking:

(i) The Plan, as altered and modified in accordance with the annexed Alterations and Modifications, shall have been duly confirmed and the order of confirmation shall have become final and not subject to further appeal.

(ii) Within five days of the expiration of our undertaking, as provided below, we shall be notified of the number of shares of new common stock Kentucky public creditors desire to sell to us and the number of shares of new common stock for which they have not subscribed.

(iii) The shares of new common stock which we will be called upon to purchase pursuant to the aforesaid

notification shall be taken and paid for by us against delivery of certificates representing the appropriate number of shares of stock and there shall be delivered to us simultaneously certificates for 80,535 shares of new common stock for which we shall make payment as provided in paragraph C above.

(iv) There will be no substantial change in the assets and liabilities of the Debtors and their financial condition as shown in the Audit Reports as of December 31, 1958 prepared by Eskew, Gresham & Diersen, Certified Public Accountants, and filed in the Proceedings, except changes in the ordinary course of business.

(v) The Reorganized Company shall be a duly organized corporation vested with the properties of the Debtors as provided in the Plan.

(vi) There will be no changes, amendments, alterations or modifications of the Plan, except those contained in the annexed Alterations and Modifications, without our consent.

(vii) All corporate and court proceedings and documents in connection with the consummation of the Plan as Amended and Modified, including the issuance of the new common stock and the form and terms of the certificate of incorporation and the by-laws of the Reorganized Company, shall be subject to approval of our counsel.

(viii) All consents, agreements and approvals by us or our counsel shall be in writing.

(ix) We shall receive as underwriting expenses a sum equal to 10 cents per share on each share of new

common stock as to which our undertaking extends pursuant to paragraphs A and B above. We have been advised by certain holders of Kentucky Bonds and Debentures that they will retain and not sell to us the shares of new common stock and that they will exercise their rights to subscribe to shares of new common stock; such shares, which are estimated to aggregate approximately 145,000 shares, will not be included in calculating our underwriting expenses of 10 cents per share. The aggregate of our underwriting expenses shall be an expense of administration and shall be assumed and paid by the Reorganized Company.

We represent to you that our purchases of new common stock, and those of any person participating with us in the purchases, will be made for purposes of investment and not for public distribution. Our undertaking herein is with the understanding, however, that in the event that future resales of the new common stock by us or by any persons participating with us in the purchase should in the opinion of our counsel require registration under the Securities Act of 1933 and/or qualification under any state blue sky law, the Reorganized Company will undertake to effect the necessary registration and/or qualification of the new common stock for such purpose and pay the expenses pertaining thereto.

To secure our undertaking, we have transmitted to Mr. Ben Williamson, Jr., Trustee of Inland Gas Corporation, the sum of $50,000, which is to be applied on account of our purchase of new common stock or promptly returned to us in the event that the Amended and Modified Plan is not approved, not accepted, not confirmed or not consummated.

We understand that the proposed Alterations and Modifications can not be effected without compliance with the provisions of Chapter X of the Bankruptcy Act relating to approval, acceptance, confirmation and consummation. However, in view of the size of the commitment undertaken by us, we must place a limitation upon its duration. Accordingly, our undertaking hereunder will terminate unless the shares of new common stock which we are required to purchase are delivered to us against payment on or before August 31, 1959, or such later date as we shall fix in our sole discretion, and upon such termination our deposit shall be returned to us.

Very truly yours,

DEMPSEY & COMPANY

By JOSEPH E. DEMPSEY
President

H. M. BYLLESBY AND COMPANY, INC.

By A. S. BOWES
Vice Chairman of the Board